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Filed Nov. 14, 1900.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 113.

BALDWIN & BALDWIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF MARYLAND, USE OF D. FRANK HULL, &c., DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

BRIEF

For Defendant in Error.

HY. KYD DOUGLAS,
for Defendant in Error.

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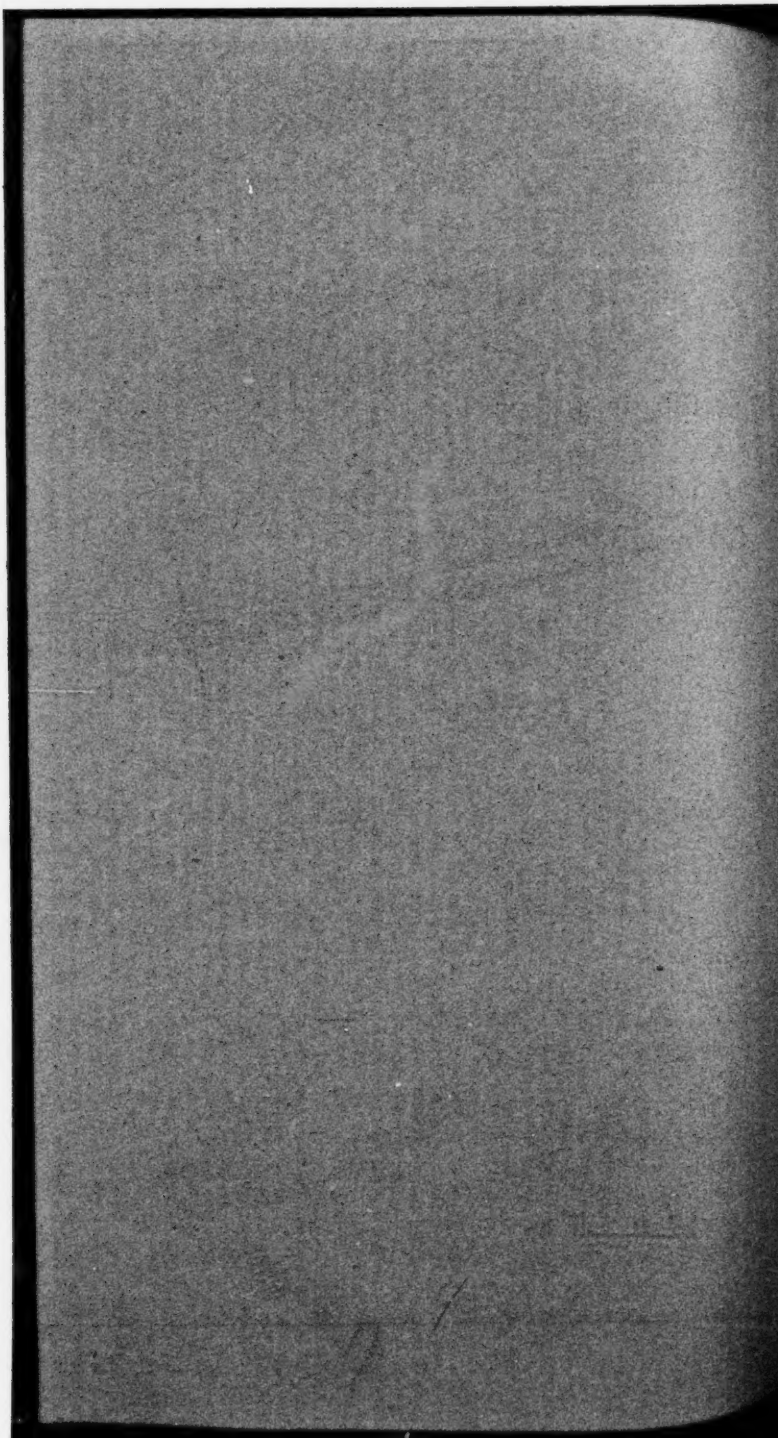

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BRIEF

OF DEFENDANT IN ERROR.

In November, 1879, Christopher C. Baldwin was appointed guardian of Columbus C. Baldwin by the Orphans Court of Washington County, Maryland. He received, as guardian, large sums of money as his ward's distributive share of the estates of James Dixon Roman, the ward's grandfather, and Louisa M. Roman, his grandmother, both of whom lived and died in Washington County, where their estates were settled in the same Orphans' Court. Christopher C. Baldwin settled his guardian accounts regularly in that Court up to 1884 when he resigned and was succeeded by R. W. Baldwin, who settled six accounts and then died. W W. Baldwin was appointed guardian in place of the deceased in

1891, and settled a number of accounts. He, like his predecessor, Christopher and the ward Columbus, was and is a resident of New York City, and the ward became of age there in 1893. During the years mentioned the Register of Wills of Washington County, Maryland, made the annual returns he is required to make to the County Commissioners, taxes were levied against the estate in hands of said guardians, upon these returns, and duly paid up to the year 1893. The property taxed consisted of stocks and bonds of corporations located outside of the State of Maryland.

This guardian settled no account after 1892 until Feb. 15, 1895, when he settled his 2nd account, showing a balance due his ward of $63,381.56, but still did not settle a final account.

On February 12, 1895, the said W. W. Baldwin, as guardian, filed a bill in the Circuit Court for Washington County, Maryland, on the Equity side seeking to restrain the collection of the taxes for 1893 and 1894, then due. Upon hearing, the judgment of the Circuit Court was against him, this Bill was dismissed. He appealed to the Court of Appeals of Maryland and the judgment of the Circuit Court was affirmed. He took the case up on *writ of error* to the Supreme Court of the United States (No. 370 October Term, 1897) and the writ of error was dismissed for want of jurisdiction.

The Court of Appeals determined in that case (85 *Md.* 145) *that Washington County, Maryland had a right to levy the taxes in question, that the levy was properly made, that the situs of the property taxed was in Maryland and that the fact that the guardian personally lived elsewhere and kept the bonds and stocks of the ward with him, did not relieve the property from taxation.*

In dismissing the "writ of error" in that case, this Supreme Court determined that the decision of the State Courts on the questions raised was final.

This reasonable termination of the case did not terminate it. The guardian would not pay the taxes, nor would he come within the jurisdiction of our Circuit Court His bondsmen, the Plaintiffs in Error (those living) refused to pay and the Collector of Taxes was compelled to pursue them by suit in Baltimore City, including in his suit the additional taxes for 1895, which were in the same position. Before he could obtain a simple judgment against the guardian's bond for taxes, decreed by the highest court in the State to be due and collectable, the Defendant in Error was obliged to contend against 27 pleas, 23 additional pleas, 15 prayers, 5 bills of exceptions and one motion in arrest of judgment ; the attorneys for the Baldwins evidently forgetting that Methuselah's longevity and Job's patience had not survived to these days. Little wonder that the Court of Appeals of Maryland, with a tired feeling, says in its opinion—"Fortunately it does not often occur (we know of no such case in this State at least) that a guardian after going in Court for the purpose of testing the validity of the taxes imposed upon property in his hands, and after the question is settled against his contention by the Appellate Court of the State, will still undertake to avoid the payment of them."

But the State obtained judgment, at last, in the Superior Court of Baltimore City, it taking one year and two months to get it. The defendants again took the case to the Court of Appeals, which speedily disposed of it by affirming the judgment below, in a carefully prepared opinion. However, the same case, virtually, is in

this Honorable Court again, and again the defendant in error has moved to dismiss it for want of jurisdiction.

It is not pretended that this is a case of double taxation. The guardian never paid any taxes in New York where he and his ward lived, and had no desire to do so. As our Court of Appeals said in this case (85 Md. 167) "If the appellants did not want to pay taxes in Washington County, he could have had a guardian appointed where the ward resides," and further the guardian appointed in New York for young Baldwin "could have had the estate in the hands of the guardian here transferred to him, &c." *It is not a question of double taxation, rather the aviodance of all taxation.*

Upon this state of facts the defendant in error has again filed a motion to dismiss the writ of error in this case and has heretofore filed its brief, to which it begs leave to call the attention of this Court.

FURTHER SUGGESTIONS.

The lengthy argument made by the learned counsel for the Plaintiff in Error, is evidently intended to convince the Court not only that all the proceedings taken by our Orphans' Court and County Commissioners in this particular case were flagrantly violative of the 14th

Amendment to the Constitution of the United States; the breadth and depth of which has never yet been fully developed when an emergency seems to require further expansion; but also that the determination of our Equity Court, Baltimore Court and our Court of Appeals, in sustaining said proceedings, after numerous strenuous arguments, are not a whit better nor less destructive of the inalienable right of the migratory owner of stocks and bonds to evade taxation. The fact that our old Commonwealth has been regarded always as one of the most conservative of the old thirteen, and has never been charged with revenue rapacity nor bold defiance of constitutional restrictions, does not deter my learned brother from administering to her some of those sharp lessons in equitable taxation which has made New York City the refuge of the upright and the terror of the tax-dodger But among all the authorities cited by counsel for the Baldwins in the Court of Appeals of Maryland and considered and passed upon by it, I have not discovered one that sustains the contentions of the Plaintiffs in Error or justifies the criticisms of their attorneys against the constitutionality of our law of taxation or the construction put upon them by our Courts.

I am at a loss to add anything, in support of our position, to the able opinion of our Court of Appeals on this very case (89 Maryland 587) and on a previous hearing of it in 85 Maryland 145, and I beg leave, instead of troubling this Court with repitition, to refer to these two decisions.

1. The first point which seems to be pressed upon this Supreme Court for the Plaintiffs in Error is that the absent property of a non-resident is not taxable. This would seem to be an indisputable proposition in cases in which it is applicable, and it is not profitable to take up time in the discussion of such decisions in other States as may be referred to by counsel; like decisions may be found in Maryland. Their distinction from this case is observable by the blind. The Baldwins sought Maryland as the place to take out letters of guardianship; they settled their accounts for years in the Orphans' Court of Washington County without complaint; they may have had, as they say, the stocks and bonds of their wards in burglar-proof safes in New York, but they could have been required at any time to produce such assets or property before our Orphans' Court for examination, or if the emergency arose, as it did, for transfer to another guardian. How can it be said that the guardian for the time being had residence any where except in Maryland. Outside of our State, as guardian, he had no existence; he wasn't even a ghost. If he was tired of the taxes in Maryland—whose burden he does not even complain of—he might have had a guardian appointed in some other State, say New York, have received from the guardian in Maryland the property of the ward and submitted it to merciful assessment of a metropolitan tax-gatherer. For reasons that even an agriculturist might guess at, this was not done.

What application to a case like this have the authorities industriously collected by Counsel for the Plaintiff in Error? By what elastic or circumventive construction can this old law and practice in Maryland be considered as a violation of any provisions of the Constitution of the United States or subject to the disapproval of its Supreme Court?

I can add nothing further to what is said by the Court of Appeals of Maryland in this case in 89 Maryland, page 598, et seq.

2. The only other point made by the Plaintiffs in Error is that no notice was given to the guardian before the tax was levied. This seems an odd contention. By the ancient law and practice in Maryland—never heretofore questioned—the Register of Wills, annually before each levy, sends in to the County Commissioners a list of taxable property in the hands of Executors, Administrators and Guardians as shown by their settlements in the Orphans' Court. For years the Guardians of the Baldwins settled annually the taxes levied by the County Commissioners under this practice, without any question or complaint.

Even in this case it does not appear that any objection was made to the County that such notice was not given. In fact, in the original Bill filed in this case by the Baldwins to restrain the collection of these taxes, numerous as were its untenable allegations and charges, this one of want of notice was not even suggested, as will appear by the Record in 85 Maryland, 145.

The Report of the Register of Wills is required to be

made on or before the 1st of March annually. The levy of taxes is not made for two or three months thereafter, so that the Guardian, Executor or Administrator has ample time to enquire into and dispute the Register's return. The statute tells him when that return is made, so that nothing but his own neglect can prevent his discovery of any error in it. In this case, however, there is no pretence that the return was erroneous or the levy unlike that in other cases. It is only "A Point." Carried to its logical conclusion, the argument of the Plaintiffs in Error would meanthat each year before the annual levy County Commissioners should notify every owner of property of any kind in Washington County that he better look out or he will have taxes to pay If that is the law in any other State, it is not the law of Maryland. The two decisions of its Court of Appeals, in this case, clearly announce that fact, and it does not seem to have occurred to them that for years the Orphans' Court and County Commissioners of the State have been violating the Federal Constitution under the ever watchful eye of the Supreme Court of the United States.

From 1879 up to the date of this contention, the Register of Washington County made his annual report to the County Commissioners of the taxable property in the hands of the Baldwin Guardian. The taxes were duly levied and promptly paid by the Guardian, Columbus Baldwin, a native of Maryland. He knew that every dollar of his children's estate, so being administered, came from the estates of their grandparents, Mr. and Mrs.

James Dixon Roman, who lived and died in Washington County. In 1895, when Columbus Baldwin, the father had passed from the guardianship and passed from life, this contention began by the refusal of the new Guardian to pay the taxes of 1893 and 1894, and since then the fight has been kept up. First in the Court of Equity, of Washington County, thence to the Court of Appeals, and thence to the U. S. Supreme Court; again in the Supreme Court of Baltimore City, and thence to the Maryland Court, the contention of the Baldwin Guardian was made and lost at every trial. And now, when young Baldwin, the ward, in his manly, ripening years has gone "to where beyond these voices there is peace," the fight will not cease, and for the sixth time, the same old contention is pressed, now again in this Honorable Court.

We have been taught there is a point beyond which litigation should end; I believe it has been reached.

I therefore renew my motion to dismiss the Writ of Error or to affirm the judgment of the Maryland Court of Appeals.

HY. KYD DOUGLAS,
For Defendant in Error.